IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 61 of 2006

Decided on : November 6, 2006

Ramesh Kumar **…..Appellant.**

VERSUS

Suresh Kumar **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. R.K. Gautam, Senior Advocate, with Mr. Anurag Sharma, Advocate.**

For the Respondent : **Mr. N.K. Thakur, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit seeking an injunction restraining the present appellant-defendant from raising any construction on the suit property, which is admittedly joint, till the partition takes place or all the joint owners give their consent to such construction.

3. Respondent-plaintiff alleged that by the construction the defendant intended to raise, obstruction was going to be caused in the path leading to his house. Allegations were also made that some trees were going to be felled. Defendant pleaded that he wanted to raise construction of only one cow-shed and that that construction was not going to cause any obstruction in the claimed path nor did he have any intention to fell any tree and that he had the right to construct a cow-shed, because a similar cow-shed has been constructed by the plaintiff on the joint property.

4. Trial Court dismissed the suit holding that since the respondent has constructed a cow-shed, appellant-defendant too had a right to construct

---

Whether the reporters of the local papers may be allowed to see the Judgment?

one. It was observed that no path was going to be obstructed as a result of the construction of the cow-shed and no trees were threatened to be felled.

5. Appeal carried by the plaintiff to the appellate Court has been accepted and the defendant has been restrained from raising any construction or causing obstruction of the path, till the land is partitioned in accordance with law.

6. I have heard the learned counsel for the parties.

7. Admittedly, the defendant did raise some construction on the joint property, though on the plea that similar construction had been raised by the respondent-plaintiff also and so he did not have any legal right to seek a restraint order against him. Learned counsel for the appellant says that the appellant-defendant does not have any intention to raise any further construction and so the appellate Court ought not to have accepted the appeal. In case, the appellant does not have any intention to raise any further construction, the injunction granted by the first Appellate Court would be innocuous. However, in view of the fact that the appellant-defendant did raise some construction, it can legitimately be assumed that the apprehension of the respondent-plaintiff was not totally unfounded. Under these circumstances, I do not think that any substantial question of law is involved. Hence, the appeal is dismissed.

November 6, 2006(sd) **(Surjit Singh), J.**